



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 05 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Matt Nelson

Tempe, AZ 85281

RE: MUR 6579
ABC News

Dear Mr. Nelson:

The Federal Election Commission reviewed the allegations in your complaint received on May 21, 2012. On June 21, 2012, based upon the information provided in the complaint, and information provided by the respondent, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on June 21, 2012.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the Factual and Legal Analysis is enclosed for your information. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g (a)(8).

Sincerely,

Anthony Herman
General Counsel

Jeff S. Jordan

BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: ABC News, Inc.

MUR 6579

I. INTRODUCTION

This matter was generated by a complaint filed by Matt Nelson alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") by ABC, Inc.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In MUR 6579, complainant Matt Nelson asserts that ABC News, Inc., a division of the American Broadcasting Companies, Inc., ran what he describes as a "'news' segment about [actress] Betty White endorsing" President Obama for re-election on ABC's "national news on Saturday, May 12, 2012." Complaint at 1.¹ According to Mr. Nelson, the piece was a "60 second commercial," as it lacked "news content." *Id.* Therefore, Mr. Nelson alleges that ABC News made an illegal in-kind contribution to the President's re-election campaign in violation of 2 U.S.C. § 441b(a), (b)(2), which prohibits contributions by corporations, including in-kind contributions. *Id.* ABC's response is not yet due and has not been received.²

¹ Although Mr. Nelson does not provide additional information about the news story central to his complaint, he does provide a link to "a story on this" on ABC's website. See <http://a.abcnews.go.com/Entertainment/betty-white-reveals-presidential-preference/comments?type=story&id=16333704>. Additionally, there is an AP account reporting on Ms. White's endorsement, available at <http://news.yahoo.com/betty-white-reveals-her-presidential-preference-071449210.html>. Based on the analysis presented below, all of these accounts, along with the ABC News broadcast at issue, would fall under the Commission's media exemption.

² Under 2 U.S.C. § 437g(a)(1), the Commission may dismiss a matter within 15 days from the notification to any potential respondents regardless as to whether a response has been received.

B. Legal Analysis

The Act prohibits corporations from making contributions, including in-kind contributions, to candidates and their authorized committees. *See* 2 U.S.C. § 441b(a). The Act and Commission regulations exclude from the definitions of contributions and expenditures “any cost incurred in covering or carrying a news story, commentary, or editorial” by news outlets, including broadcasting stations, newspapers, magazines, Internet websites and other electronic publications, unless such facilities are “owned or controlled by any political party, political committee, or candidate” 11 C.F.R. §§ 100.73 and 100.132; *see also* 2 U.S.C. § 431(9)(B)(i).

The Commission conducts a two-step analysis to determine whether the media exemption applies. First, the Commission asks whether the entity engaging in the activity is a media entity. *See* Advisory Opinions 2010-8 (Citizens United); 2005-16 (Fired Up!); and 1996-16 (Bloomberg).

Second, in determining the scope of the exemption, the Commission considers two factors: (1) whether the press entity is owned or controlled by a political party, political committee, or candidate; and, (2) whether the media entity is acting as a media entity in conducting the activity at issue (i.e., whether the entity is acting in its “legitimate press function”). *See Reader’s Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).

With respect to the second factor, to determine whether an entity was engaged in a legitimate media function, the Commission examines: (1) whether the entity’s materials are available to the general public; and (2) whether the materials are comparable in form to those ordinarily issued by the entity. *See, e.g.,* Advisory Opinion 2010-8 (Citizens United) (citing

1 *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 250-251 (1986)); Advisory Opinion 2005-
2 16 (Fired Up!).

3 The Commission has recognized that an entity otherwise eligible for the media exemption
4 "would not lose its eligibility merely because of a lack of objectivity in a news story,
5 commentary, or editorial, even if the news story, commentary, or editorial expressly advocates
6 the election or defeat of a clearly identified candidate for Federal office." Advisory Opinion
7 2005-16 (Fired Up!); *see also* MUR 5928 (Kos Media, LLC).

8 Here, ABC News fits squarely within the media exemption. First, ABC News is a media
9 entity that regularly provides news and commentary on its television broadcasts, as well as on its
10 Internet website. Second, in determining the scope of the exemption, the complaint does not
11 allege, nor have we discovered, any publicly available information indicating that ABC News is
12 owned by a political candidate, committee or party. Furthermore, ABC News, is widely made
13 available to and viewed by the public, and the Complaint fails to allege any facts, nor are we
14 aware of any, suggesting that the news segment featuring Betty White's endorsement of
15 President Obama is somehow out of the ordinary from the type of news that ABC News typically
16 covers. Finally, the fact that the news piece cited by the complainant promotes President
17 Obama's candidacy does not remove it from the scope of the media exemption. *See* Advisory
18 Opinion 2005-16 (Fired Up!); *see also* MUR 5928 (Kos Media, LLC).

19 Accordingly, the Commission dismissed this matter and closed the file.